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10 BEFORE THE DEPARTMENT OF CORPORATIONS
 11 OF THE STATE OF CALIFORNIA

13	THE CALIFORNIA CORPORATIONS)	
14	COMMISSIONER,)	File No.: 100-3125
15)	ACCUSATION
16	Complainant,)	
17	vs.)	
18	Royal Payday Advance, Inc.,)	
19	Respondent.)	
20	<hr/>		

21 Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and
 22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 INTRODUCTION

24 On February 28, 2006, the Commissioner of the California Department of Corporations
 25 (“Department”) issued Respondent, Royal Payday Advance, Inc., a deferred deposit transaction
 26 originator license (File No. 100-3125) pursuant to the California Deferred Deposit Transaction Law
 27 (“CDDTL”) set forth in California Financial Code sections 23000 et seq. (All future references to
 28 sections are to the California Financial Code unless indicated otherwise.)

ACCUSATION

1 By reason of Respondent's numerous and continuing violations of the CDDTL, the
2 Commissioner seeks to revoke the deferred deposit transaction originator license of Respondent
3 pursuant to section 23052, void contracts pursuant to section 23060, and issue six (6) citations in the
4 amount of \$2,500 per citation pursuant to section 23058 to Respondent for violations of the deferred
5 deposit transaction law.

6 I

7 FACTUAL BACKGROUND

8 1. During all relevant times herein, Royal Payday Advance, Inc. ("Royal") was a
9 California corporation doing business at its place of business, which is located at 5585 Reseda
10 Boulevard #102, Tarzana California 93638. Royal's president is Alex Rosenberg.

11 2. The Department has a mandatory duty and is responsible for enforcing all provisions
12 of the CDDTL. Royal has engaged in numerous violations of the CDDTL as discussed below.

13 3. Since at least March 2006, Royal has engaged in the business of deferred deposit
14 transactions by offering, originating and making deferred deposit transactions as described below.

15 4. A deferred deposit transaction is a written transaction whereby one person gives funds
16 to another person upon receipt of a personal check and it is agreed that the personal check shall
17 not be deposited until a later date. These loans are sometimes referred to as "payday advances"
18 or "payday loans."

19 5. In January 2006 Respondent filed with the Department an application for a license to
20 make deferred deposit transactions and included a Declaration, designated as "Exhibit K" to the
21 application, and signed under penalty of perjury by its president Alex Rosenberg stating:

22 **I (we) have obtained and read copies of the California Deferred Deposit**
23 **Transaction Law (Division 10 of the California Financial Code) and the Rules**
24 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**
25 **their content: and,**

26 **I (we) agree to comply with all the provision[s] of the California Deferred Deposit**
27 **Transaction Law, including any rules or orders of the Commissioner of**
28 **Corporations.**

Respondent's Declaration to the application also states that "by signing this declaration" "the applicant hereby agrees (or attests) or declares understanding of the following items listed below:"

1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
 2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's file records.
 3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer's name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due date.
 4. That the applicant will maintain a file of all advertising for a period of 90 days from the date of its use, which will be available to the Commissioner of Corporations upon request.
 5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
 6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
 7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.
6. The Respondent was required to and did complete another Declaration designated as "Exhibit L" to the application, which was signed under penalty of perjury stating:
1. The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction (Financial Code Section 23037(i).)

7. On February 28, 2006, a letter accompanied the Commissioner's issuance of a CDDTL license to Respondent, which informed Respondent of the following facts:

[T]here are certain obligations and responsibilities that a licensee must comply with. The following information about a licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is provided for your reference . . . a licensee should review and become familiar with all provisions of the law and rules and regulations. . . .

5. A licensee is subject to statutory books and records requirements . . . (Section 23024.)

8. Notwithstanding knowledge regarding the licensure requirements, Respondent willfully and knowingly engaged in CDDTL violations. The Department examiner's review of Royal revealed multiple violations of the CDDTL warranting revocation, restitution to consumers and penalties of \$2,500 for each of the six violations for a total administrative penalty of \$15,000.

II DEFERRED DEPOSIT TRANSACTION LAW

9. Respondent, as a licensee, was required to comply with basic legal requirements imposed on all CDDTL licensees, including maintaining books and records and a minimum net worth.

10. Section 23007 requires a licensee to maintain a minimum net worth of \$25,000 and, in relevant part, states:

The applicant shall file with the application financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000).

11. Section 23024 mandates that every licensee comply with the following requirement:

Each licensee shall keep and use books, accounts, and records that will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations promulgated by the commissioner. Each licensee shall maintain any other records as required by the commissioner. The commissioner or a designee of the commissioner may examine those records at any reasonable time. Upon the request of the commissioner, a licensee shall file an authorization for disclosure of financial records of the licensed businesses pursuant to Section 7473 of the Government Code.

All records shall be kept for two years following the last entry on a deferred deposit transaction and shall enable an examiner to review the recordkeeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's deferred deposit transaction file records.

12. Section 23035 set forth the requirements of the written agreements for deferred deposit transactions and in relevant states:

(a) A licensee may defer the deposit of a customer's personal check for up to 31 days, pursuant to the provisions of this section. The face amount of the check shall not exceed three hundred dollars (\$300). Each deferred deposit transaction shall be made pursuant to a written agreement as described in subdivision (e) that has been signed by the customer and by the licensee or an authorized representative of the licensee.

...

(c) Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that shall include, but not be limited to, the following:

- (1) Information about charges for deferred deposit transactions.
- (2) That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars (\$15).
- (3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.
- (4) The department's toll-free telephone number for receiving calls regarding customer complaints and concerns.
- (5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.
- (6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

...

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

- (1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States

- 1 currency and as an APR as required under the Federal Truth In
- 2 Lending Act and its regulations.
- 3 (2) A clear description of the customer's payment obligations as
- 4 required under the Federal Truth In Lending Act and its regulations.
- 5 (3) The name, address, and telephone number of the licensee.
- 6 (4) The customer's name and address.
- 7 (5) The date to which deposit of check has been deferred (due date).
- 8 (6) The payment plan, or extension, if applicable as allowed under
- 9 subdivision (c) of Section 23036.
- 10 (7) An itemization of the amount financed as required under the
- 11 Federal Truth In Lending Act and its regulations.
- 12 (8) Disclosure of any returned check charges.
- 13 (9) That the customer cannot be prosecuted or threatened with
- 14 prosecution to collect.
- 15 (10) That the licensee cannot accept collateral in connection with the
- 16 transaction.
- 17 (11) That the licensee cannot make a deferred deposit transaction
- 18 contingent on the purchase of another product or service.
- 19 (12) Signature space for the customer and signature of the licensee or
- 20 authorized representative of the licensee and date of the transaction.
- 21 (13) Any other information that the commissioner shall deem
- 22 necessary by regulation.

13. Section 23036, subdivisions (a), (e) and (f) limit fees and states:

- 19 (a) A fee for a deferred deposit transaction shall not exceed 15 percent of
- 20 the face amount of the check.
- 21 (c) A licensee shall not enter into an agreement for a deferred deposit
- 22 transaction with a customer during the period of time that an earlier
- 23 written agreement for a deferred deposit transaction for the same
- 24 customer is in effect.
- 25 (e) A fee not to exceed fifteen dollars (\$15) may be charged for the return
- 26 of a dishonored check by a depository institution in a deferred deposit
- 27 transaction. A single fee charged pursuant to this subdivision is the
- 28 exclusive charge for a dishonored check. No fee may be added for late
- payment.
- (f) No amount in excess of the amounts authorized by this section shall be
- directly or indirectly charged by a licensee pursuant to a deferred deposit
- transaction.

1 14. Section 23037 limits a licensee's transactions and activities and in relevant part states:

2 In no case shall a licensee do any of the following:

3 (a) Accept or use the same check for a subsequent transaction, or
4 permit a customer to pay off all or a portion of one deferred deposit
transaction with the proceeds of another.

5 . . .

6 (f) engage in any unfair, unlawful, or deceptive conduct, or make
7 any statement that is likely to mislead in connection with the
business of deferred deposit transaction.

8 15. California Code of Regulations, title 10, section 2025, subdivision (c)(1) specifies that
9 books and records must be maintained for two (2) years, as set forth below.

10 (c)(1) Except as provided in subsection (e), records to be maintained at
11 each licensed business location for each deferred deposit transaction shall
12 include at least the following: the deferred deposit transaction agreement,
13 evidence of the check, written disclosure(s) used to provide notice in
14 compliance with subdivision (c) of Section 23035 of the Financial Code,
15 record of any and all extensions of time or payment plans for repayment
of an existing deferred deposit transaction, record of time periods for
transaction fees and charges, and record of
transaction payments.

16 III

17 DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

18 16. On April 5, 2007 and July 3, 2007, the Commissioner's examiner visited Royal after
19 giving the licensee advance notice of the Department's regulatory examination.

20 17. The Commissioner's examiner found the licensee failed to maintain the statutory
21 minimum net worth and to maintain deferred deposit transactions books and records for the two-
22 year period required by sections 23007 and 23024, respectively. The examiner found the licensee
23 was in violation of section 23035 for failing to distribute the written notice and to provide the
24 required disclosures and agreements to consumers. Respondent also engaged in multiple deferred
25 deposit transactions, charged fees in excess of statutory limitations and made misleading
26 statements in violation of sections 23036 and 23037. The licensee did not maintain evidence of
27 checks for each transactions in violation of section 23024 and California Code of Regulations, title
28 10, section 2025, subdivision (c)(1).

1 18. Respondent's financial statements provided to the Department show that
2 Respondent's net worth is well below the minimum. Respondent indicated that it was not aware
3 that a written notice and written agreement were to be provided to consumers. The written
4 agreement that Respondent did provide to the examiner contained agreement terms that are in
5 violation of section 23037, subdivision (a), such as the customer could pay off the loan with
6 another loan. The licensee arranged for multiple deferred deposit transactions in which one or
7 more checks were obtained, which violates the CDDTL. The licensee also arranged for loans
8 greater than \$300 and charged a finance fee greater than fifteen percent (15%) of the face amount
9 of the consumer's check in violation of section 23036, subdivision (a) and (c). The licensee
10 failed to maintain evidence of the check involved in all closed loans in violation of the California
11 Code of Regulations, title 10, section 2025, subdivision (c)(1).

12 19. Respondent's specific violations include the following CDDTL sections: 23007, 23024,
13 23035, subdivisions (a), (c) and (e), 23036, subdivisions (a) (c) (e) and (f), 23037 subdivisions (a)
14 and (f), and California Code of Regulations, title 10, section 2025. For Respondent's violations
15 apparent during the Department's regulatory examination and review of records, the Commissioner
16 is issuing Citations A through F described as follows:

17 **CITATION A** - Respondent failed to meet the minimum net worth required by section 23007.

18 **CITATION B** – Respondent failed to maintain deferred deposit transaction records including
19 checks for a period of two years from the date of the transactions as required by section 23024
20 and California Code of Regulations, title 10, section 2025(c)(1).

21 **CITATION C** - Respondent failed to enter into written agreements for deferred deposit
22 transactions with consumers as required by section 23035.

23 **CITATION D** - Respondent entered into deferred deposit transactions that exceeded 31 days in
24 violation of section 23035, subdivision (a).

25 **CITATION E** - Respondent failed to provide the notice to consumers prior to them entering
26 into deferred deposit transactions as required by section 23035, subdivision (c).

27 **CITATION F** – Respondent failed to provide the disclosures to consumers as required by section
28 23035, subdivision (e).

IV

COMMISSISONER’S AUTHORITY TO ISSUE CITATIONS

Section 23058 gives the Commissioner’s authority to issues citations and states:

(a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

CITATIONS

Pursuant to section 23058 Royal Payday Advance, Inc. is hereby ordered to pay to the Commissioner within 30 days from the date of these citations, an administrative penalty of two thousand five hundred dollars (\$2,500) for each of the six citations listed below for the total amount of fifteen thousand dollars (\$15,000).

CITATION A. - \$2,500

CITATION B. - \$2,500

CITATION C. - \$2,500

CITATION D. - \$2,500

CITATION E. - \$2,500

CITATION F. - \$2,500

V

COMMISSISONER’S AUTHORITY TO VOID TRANSACTIONS

Respondent willfully violated section 23036 of the CDDTL by entering into deferred deposit transactions with at least fourteen (14) consumers while existing loans were outstanding. The amount of these transactions total \$2,710. Respondent also violated section 23035 and 23036 by entering into transactions with at least five (5) consumers where the face amounts of the checks and the fees exceeded the statutory maximum. The five transactions total \$1,565.88

California Financial Code section 23060 states:

(a) If any amount other than, or in excess of, the charges or fees permitted by this division is willfully charged, contracted for, or received, a deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive the principal amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS

Pursuant to California Financial Code section 23060, subdivisions (a) and (b), the above described deferred deposit transactions for the nineteen consumers totaling at least \$4,275.88 are declared void.

Further, Respondents have no right to collect or receive any amount provided in the deferred deposit transactions or any charges or fees in connection with these consumer transactions and are hereby ordered to immediately return any amount and all charges and fees received for these transactions.

VI

COMMISSISONER’S AUTHORITY TO REVOKE RESPONDENT’S CDDTL LICENSE

Section 23052 sets forth the grounds for a suspension or revocation of a CDDTL license and states:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

CONCLUSION

Complainant finds, by reason of the foregoing, that Respondent, Royal Payday Advance, Inc., has violated multiple sections of the CDDTL that include Financial Code sections 23007, 23024, 23035, 23036, 23037 as well as sections 2025 of title 10 of the California Code of Regulations.

The violations and findings set forth above constitute grounds under Financial Code section 23058 to issue citations assessing administrative penalties, grounds under Financial Code section 23060 to void deferred deposit transaction contracts and also constitute grounds under Financial Code section 23052 to revoke the CDDTL license of Respondent.

Thus, the California Corporations Commissioner is justified pursuant to section 23058 in issuing citations to Respondent, justified pursuant to section 23060 in voiding deferred deposit transaction contracts and justified pursuant to section 23052 in revoking the California deferred deposit transaction license of Respondent Royal Payday Advance, Inc. (File No. 100-3125).

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1 WHEREFORE, Complainant, the California Corporations Commissioner prays that

2 1. Respondent, Royal Payday Advance, Inc. pursuant to
3 Financial Code section 23058 pay to the California Corporations
4 Commissioner an administrative penalty in the total amount of
5 fifteen thousand dollars (\$15,000) for the above Citations A
6 though F, inclusive, within thirty days (30) from the date set
7 forth below;

8 2. Respondent, Royal Payday Advance, Inc., pursuant to Financial
9 Code section 23060, pay to the California consumers the total
10 amount of four thousand dollars two hundred seventy five dollars
11 (\$4,275.88) for the above-described violations; and,

12 3. The deferred deposit transaction license of Respondent, Royal
13 Payday Advance, Inc. be revoked pursuant to Financial Code section
14 23052.

15 Dated: August 8, 2007
16 San Francisco, California

17 Respectfully submitted,

18 PRESTON DuFAUCHARD
19 California Corporations Commissioner

20 By _____

21 Joan E. Kerst
22 Senior Corporations Counsel
23 Attorney for Complainant
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